

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.659 OF 2016
WITH
WRIT PETITION NO.673 OF 2016

Mukesh Hanuman Patil

...Petitioner

vs.

Kamal Panga & Dharma Wagh and Ors.

...Respondents

Mr. Naman Gadhiya i/b. Mr. A.M. Gokhale, for the Petitioner.

Mr. Sachin Tigde, for Respondent Nos. 1 to 5 in Writ Petition No. 659 of 2016 and for Respondent Nos. 1 to 4 in Writ Petition No. 673 of 2016.

Mr. Amol Gatne, for Respondent No. 6 (Insurance Co.) in Writ Petition No. 659 of 2016 and for Respondent No. 5 (Insurance Co.) in Writ Petition No. 673 of 2016.

Mr. R.P. Kadam. AGP for Respondent-State.

CORAM : M. S. SONAK, J.

DATE : MARCH 25, 2019

ORAL JUDGMENT

. On 22nd March, 2019 this Court was constrained to make the following order:

. *“In the morning session, Mr.Naman Gadhiya, holding for the Mr.Avinash Gokhale mentioned this matter for adjournment and Mr.Subhasm Misar holding for Mr.Amol Ghatne stated that there is no objection for adjournment. Since it was told that the respondents are not opposing adjournment, the matter was adjourned.*

2. *Today, when this matter at serial No.32 on board was called out, Mr.Tigde, learned counsel for the contesting respondents in these matters, pointing out that he is patiently awaiting for these matters since morning session.*

He points out that since the respondents, whom he represents are adivasis, therefore, with some justification complains about the adjournment of the matters in the morning session.

3. Accordingly, place these matters on Monday i.e. March 25, 2019. H.O.B.”

2. Today Mr. Gatne appears and expresses regret and states that this will not be repeated.

3. Since Mr. Tigde, learned counsel for Respondent Nos. 1 to 5 is not willing to forgo cost, this Court directs the Respondent No. 6 in Writ Petition No. 659 of 2016 and Respondent No. 5 in Writ Petition No. 673 of 2018 to pay cost of Rs. 2,500/- to Respondent Nos. 1 to 5 in Writ Petition No. 659 of 2016 and to Respondent Nos. 1 to 4 in Writ Petition No. 673 of 2016. This means that cost of Rs. 2,500/- will have to be paid in respect of each of the Writ Petitions. Cost to be paid within a period of one week from today.

4. At the request of Mr. Gatne who appears for the Insurance Company, the costs of Rs. 2,500/- to be paid in each of these Petitions in favour of the claimants, are permitted to be paid to Mr. Tigde who appears for the Respondents/Claimants.

5. Heard Mr. Naman Gadhiya i/b. Mr. A.M. Gokhale, for the Petitioner, Mr. Sachin Tigde, for Respondent Nos. 1 to 5 in Writ Petition No. 659 of 2016 and for Respondent Nos. 1 to 4 in Writ Petition No. 673 of 2016, Mr. Amol Gatne, for Respondent No. 6 in Writ Petition No. 659 of 2016 and for Respondent No. 5 in Writ Petition No. 673 of 2016 and Mr. R.P. Kadam. AGP for the Respondent-State.

6. The learned counsel for the parties agree that these Petitions can be disposed of by a common judgment and order.

7. In both these Petitions, the Petitioner, had taken out application Exhibit 5 in execution proceeding for the execution of awards made by the Motor Accident Claims Tribunal (MACT). Mr. Gadhiya points out that the awards made by MACT were *ex-parte* qua the Petitioner (owner of the motor vehicle in question). He points out that there was no valid service upon the Petitioner and thereafter the Petitioner has taken out application for setting aside the awards. Pending adjudication of such application, the executing Court should have stayed further execution proceeding and allowed the application Exhibit 5 taken out by the Petitioner.

8. Mr. Tigde, learned counsel for the Respondents/Claimants submits that the awards were made in the year 2011 and that too after the valid service upon all the Respondents. He points out that the awards *ex-parte* Insurance Company and making the Petitioner liable for the payment. The claimants belongs to Scheduled Tribe category and are in dire need of compensation amount which has been awarded in their favour. He points out that no compensation amount has been received by the claimants. He submits that the Petitioner, in the unlikely event of success in the application for setting aside the awards can always applied for restitution and therefore there is no necessity to interfere in the impugned orders.

9. On 21st January, 2016 this Court has made the following order.

“1] Issue notice to the Respondents in both the petitions, returnable on 16 February 2016. Place the matters on Supplementary Board.

2] The notice to indicate that these petitions will be disposed of finally at the stage of admission.

3] In addition to the usual mode of service, the Petitioners to effect private service and file Affidavit of Service. Hamdast allowed.

4] Mr. Amol Gatne waives service on behalf of the National Insurance Co. Ltd. and Mr. S. D. Rayrikar waives service on behalf of the State of Maharashtra.

5] Until the next date, the judgments and award dated 22 July 2011 shall not be executed. This is subject to the petitioner depositing before the Motor Accidents Claim

Tribunal at Thane, an amount of Rs.2,25,000/- in M.A.C.P. No. 888 of 2005 and Rs.2,50,000/- in M.A.C.P. No. 889 of 2005 on or before 15 February 2016.

6] It is made clear that pendency of these petitions shall not be a bar to the MACT proceeding with the applications made by the petitioner for setting aside the awards dated 22 July 2011 in both the aforesaid matters, inter alia on the grounds that there was no valid service to the petitioner.

7] All concerned to act on basis of authenticated copy of this order.”

10. Despite the clear direction in paragraph 6 of the order dated 21st January, 2016, it appears that till date the application for setting aside the awards are pending before MACT. Mr. Tigde, points out that the Petitioner has filed affidavit in lieu of examination in chief only on 5th March, 2019. Taking into consideration the direction in paragraph 6 of the order dated 21st January, 2016, learned MACT should have proceeded with the pending application expeditiously. So also the Petitioner was required to act with greater diligence in pursuing the application for setting aside the awards made by the MACT.

11. Be that as it may, Mr. Gadia points out that the amount as directed to be deposited in terms of the order dated 21st January, 2016 have been deposited by the Petitioner before MACT and the Petitioner has right to at least have his application for setting aside

the *ex-parte* awards considered in accordance with law. Therefore the rights of the Petitioner will have to be balanced against the corresponding prejudice which this entire process has occasioned to the Respondents-claimants represented by Mr. Tigde.

12. Accordingly, in the interest of justice, these Petitions are disposed of with the following order.

(a) The Petitioner is directed to pay to the Respondents-claimants cost of Rs. 25,000/- in each of the Petitions, within a period of four weeks from today. This means that cost of Rs. 25,000/- will have to be paid to the Respondent Nos. 1 to 5 in Writ Petition No. 659 of 2016 and cost of Rs. 25,000/- will have to be paid to Respondent Nos. 1 to 4 in Writ Petition No. 673 of 2016 within a period of four weeks from today.

(b) If the amount of cost as aforesaid are indeed paid within a period of four weeks from today, then the impugned orders declining interim relief shall stand set aside and there shall be interim relief restraining execution of the awards made by MACT, until the MACT disposes of Petitioner's application for setting aside the *ex-parte* awards.

(c) However, it is made clear that if the amount of costs are

not paid or deposited within four weeks from today, then these Petitions shall stand dismissed without any further reference to this Court. The execution shall then proceed and the amounts deposited will have to be paid to claimants forthwith.

(d) It is made clear that this Court has already granted sufficient indulgence to the Petitioner and hereafter the Petitioner shall not be entitled to seek extension of time for payment of cost.

(e) In case there is any difficulty in payment of costs, the Petitioner is at liberty to deposit the amount of cost before MACT within four weeks from today and thereafter the Respondents-claimants are at liberty to withdraw the same unconditionally.

(f) If the amount of cost are indeed paid/deposited within four weeks from today, the learned MACT is directed to dispose of the pending application for setting aside the awards on their own merits and in accordance with law as expeditiously as possible and in any case within a period of two months from the date of payment of costs.

(g) If the amount of costs are not paid, then, MACT is at liberty to dispose of this application for setting aside the *ex-party* awards as per their turn.

(h) The amount deposited by the Petitioner shall be invested in the Nationalized bank, if, the interim relief is to continue until the disposal of the application for setting aside of the awards. Even if the application for setting aside the awards are allowed and the proceeding in the Claim Petition are required to commence afresh, the amount deposited by the Petitioner shall remain invested and shall abide by the final order which MACT shall made in the Claim Petition.

13. Rule is made absolute in the aforesaid terms in both the Petitions.

14. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)